

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

DIGITAL MEDIA SOLUTIONS, LLC, )  
Plaintiff, and ) Case No. 1:19-cv-145  
MANAGEMENT SERVICES GROUP, INC. ) Honorable Dan Aaron Polster  
d/b/a MARKETING SUPPORT NETWORK, ) Magistrate Thomas M. Parker  
Plaintiff-Intervenor, )  
v. )  
SOUTH UNIVERSITY OF OHIO, LLC, )  
Defendants. )

## **COMPLAINT IN INTERVENTION**

AND NOW COMES, Intervenor-Plaintiff, Management Services Group, Inc. d/b/a Marketing Support Network (“MSN”), by and through their attorneys, Dingess, Foster, Luciana, Davidson & Chleboski, LLP, and files the following Complaint in Intervention.

## **PARTIES**

1. Intervenor-Plaintiff, MSN, is a Pennsylvania corporation with a principal place of business located in Allegheny County at 200 Old Pond Road, Suite 101, Bridgeville, Pennsylvania 15017.

2. Defendant, Dream Center Education Holdings, LLC (“DCEH”), is an Arizona non-profit limited liability company with its principal place of business located in Allegheny County at 1400 Penn Avenue, Pittsburgh, Pennsylvania 15222.

## **FACTUAL BACKGROUND**

3. In November 2007, MSN entered into a Marketing Services Agreement with Education Management LLC (“Education Management”) to provide inbound and outbound call management and

data entry services in connection with the operation of post-secondary educational institutions throughout the United States.

4. Through May 2015, MSN and Education Management entered other similar agreements and addendums for MSN to provide similar services. Upon information and belief, Education Management Corporation (“EDMC”) was the parent company of Education Management.

5. In May 2015, EDMC informed MSN of a financial restructuring pursuant to which Education Management transferred to Education Management II all right, title and interest in the agreements with MSN. MSN continued to provide the same services to Education Management II through September 2017.

6. By Support Services Agreement, dated September 1, 2017 (the “Support Services Agreement”), MSN entered into an agreement with Education Management II to continue to provide inbound and outbound call management and data entry services. (A true and correct copy of the Support Services Agreement is attached as Exhibit A.)

7. Although MSN and Education Management II did not sign the Support Services Agreement, the parties agreed the Support Services Agreement was in effect and performed in accordance with the written terms of the Support Services Agreement.

8. In October 2017, DCEH acquired substantially all the assets of EDMC and Education Management II. DCEH provided notice to MSN and informed MSN that DCEH would assume all obligations of Education Management II under its agreements with third parties. DCEH also informed MSN to send invoices for services to DCEH.

9. From October 2017 through December 31, 2018, MSN provided to DCEH the same inbound and outbound call management and data entry services that it had previously provided to Education Management II under the Support Services Agreement.

10. MSN billed DCEH for the services provided and DCEH continued to pay regularly for those services through at least September 24, 2018.

11. By letter dated October 29, 2018 (provided by email to MSN on October 31, 2018), DCEH provided notice that it was terminating the Support Services Agreement effective December 31, 2018.

12. MSN continued to provide inbound and outbound call management and data entry services through December 31, 2018 and properly billed DCEH for those services. Currently, DCEH owes MSN the total amount of \$591,405.88 for services provided by MSN through December 31, 2018.

**COUNT I**  
**BREACH OF CONTRACT**

13. The averments of the preceding paragraphs are incorporated by reference as if fully set forth herein.

14. MSN and Education Management II are parties to the Support Services Agreement and DCEH assumed all obligations under the Support Services Agreement on behalf of Education Management II.

15. MSN provided marketing services pursuant to the Support Services Agreement.

16. MSN submitted detailed invoices for its work and DCEH regularly paid for MSN's services through September 2018.

17. MSN continued to provide services to DCEH through December 31, 2018 and submitted detailed invoices for its work during that time period, including numerous follow-up emails requesting payment.

18. On February 8, 2019, DCEH made two payments in the total amount of \$7,004.98, which reduced the outstanding balance from \$598,410.86 to \$591,405.88.

19. DCEH failed to remit payment in full for MSN's services despite its clear obligation to do so.

20. By failing to make payment for the services provided by MSN, DCEH materially breached the Support Services Agreement.

21. MSN incurred substantial damages as a result of DCEH's material breach of the Support Services Agreement.

22. DCEH is liable to MSN for all damages proximately caused by its breach of contract.

**WHEREFORE**, Intervenor-Plaintiff respectfully requests that this Court enter judgment against Defendant for damages in an amount that exceeds \$500,000 including pre- and post-judgment interest thereon, costs, expenses, attorney's fees and such other relief as the Court deems just and proper.

**COUNT II**  
**UNJUST ENRICHMENT**

23. The averments of the preceding paragraphs are incorporated by reference as if fully set forth herein.

24. MSN, in performing the work pursuant to the Support Services Agreement, conferred a benefit upon DCEH.

25. DCEH knowingly and willingly accepted and retained the benefit of the work performed by MSN.

26. MSN has not been fully compensated by DCEH for the work it performed for DCEH.

27. DCEH's acceptance and retention of the benefit of the work performed by MSN, without paying for the same, is inequitable.

28. DCEH owes MSN the total amount of \$591,405.88 for services provided by MSN through December 31, 2018.

**WHEREFORE**, Intervenor-Plaintiff respectfully requests that this Court enter judgment against Defendant for damages in an amount that exceeds \$500,000 including pre- and post-judgment

interest thereon, costs, expenses, attorney's fees and such other relief as the Court deems just and proper.

**COUNT III**  
**BREACH OF CONTRACT IMPLIED IN FACT /QUANTUM MERUIT**

29. The averments of the preceding paragraphs are incorporated by reference as if fully set forth herein.

30. In the alternative, the conduct of MSN and DCEH demonstrates that there was an agreement between the parties as to the payment terms in connection with the services provided by MSN.

31. DCEH has paid in part for the services provided to it, and even recently on February 8, 2019, DCEH made two payments in the total amount of \$7,004.98, which reduced the outstanding balance from \$598,410.86 to \$591,405.88.

32. DCEH has breached the implied agreement with MSN by failing to pay in full for the marketing services provided to it.

33. DCEH received a benefit, the fair and reasonable value of which is outstanding, for services provided by MSN through December 31, 2018 for the amount of \$591,405.88.

34. DCEH has refused and continues to refuse to pay the sums due and owing to MSN.

35. It would be unconscionable for DCEH to retain the value of the work of MSN without making proper compensation to MSN.

**WHEREFORE**, Intervenor-Plaintiff respectfully requests that this Court enter judgment against Defendant for damages in an amount that exceeds \$500,000 including pre- and post-judgment interest thereon, costs, expenses, attorney's fees and such other relief as the Court deems just and proper.

Date: June 27, 2019

Respectfully submitted,

DINGESS, FOSTER, LUCIANA, DAVIDSON &  
CHLEBOSKI LLP

BY: /s/ Jeremy K. Knaebel

Jeremy K. Knaebel  
OH. ID. No. 0092893  
20 Stanwix Street, Third Floor  
Pittsburgh, PA 15222  
jknnaebel@dfllegal.com  
(412) 926-1800  
(412) 926-1801 (Fax)